IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.1030 OF 2005
WITH
CIVIL APPLICATION NO.1232 OF 2005

All India Dugdha Udyog Mandal (Proposed) & Ors. ..Appellants.
Vs.
Municipal Corporation of Greater Bombay ..Respondent.

...

Ms. Indu Prakash for the Appellants.
Ms. Geeta Joglekar for the BMC.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

22nd November, 2005.

P.C. :

1. The City Civil Court has by the impugned order dated 20th September, 2005 dismissed a Notice of Motion in a suit purportedly filed in a representative capacity for an injunction restraining the Municipal Corporation from obstructing the carrying on of business by the members of the Appellants or from seizing their milch cattle.

2. Admittedly, notices have been issued by the Municipal Corporation under Section 394(4) of the Mumbai Municipal Corporation Act, 1888. The Municipal Corporation filed affidavits in reply stating that the cattle stables at Khotwadi, Santacruz (West)

were inspected and were found to be in unhygienic conditions leading to nuisance to the residents of the area. A copy of one notice which has been annexed recites that there was a serious nuisance, the details of which were thus :

"1. Serious nuisance on account of accumulation of dung, urine, waste water refuse etc. within and outside the stable premises. This accumulation on near and inside the stable premises is giving rise to mosquito nuisance;

2. The stable premises is situated in the midst of residences;

3. Dung etc. is not removed regularly;

4. No proper drainage is provided for the free flow of waste water from the stable premises;

5. Stable premises is kept in filthy, unhygienic and insanitary condition;

6. It is dangerous to the health of the residents in the vicinity;

7. Dung mixed with grass and other waste matters are thrown in the river/ nallah on the side of the stable premises and hereby blocking the free flow of water in the river/ nallah;

8. Dung mixed with grass and other matters etc. kept accumulated on the side of the stable premises causing nuisance;

9. Kept milch cattles without BMC licence under Section 394(1)(3);

10. Discharging or allowing to discharge stable refuse such as buffalo dung mixed with urine in drain so as to be offensive, injurious to health and cause of nuisance and harassing the

area."

3. The Learned Trial Judge has arrived at a prima facie conclusion having regard to the reply which has been submitted by the Municipal Corporation that the stables have created unhygienic conditions in the locality; that there is no proper drainage for the flow of waste water; that dung was not removed regularly and that there is a serious threat to public health. The Learned Trial Judge was justified in declining to grant interim relief in the Notice of Motion since public health must have paramount importance. Under Section 394 except under and in accordance with the terms and conditions of a licence granted by the Commissioner, no person shall "... (d) keep or use, or suffer or allow to be kept or used, in or upon any premises, any article or animal which, in the opinion of the Commissioner, is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of the manner in which, or the conditions under which, the same is, or is proposed to be, kept or used or suffered or allowed to be kept or used." The large majority of the members of the Appellant association do not have licences under Section 394. Though two members are alleged to have licences under Section

394, copies of the aforesaid licences are not placed on the record. Moreover, that does not preclude the Corporation from taking recourse to its powers where a nuisance results from the conduct of a trade or business. The Municipal Corporation is duty bound to ensure that public health is not jeopardised by the conduct of trades and businesses in unhygienic and unsanitary conditions. The Learned Trial Judge was not in error in declining interim relief. Counsel submits that the Appellants have submitted an application to the State Government for the allotment of alternate land outside the limits of Greater Mumbai. If that be so, the Appellants would be at liberty to pursue their application. There is no merit in the Appeal which is accordingly dismissed. Since the interim injunction has been refused by the City Civil Court, and that order has been upheld by the present order, it would be open to the Municipal Corporation to take necessary steps in accordance with law in the event that there is non compliance with the notice issued by the Corporation.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.